

**REMARKS**

In the non-final Office Action mailed 3 July 2006, the examiner objects to dependent claims 2 – 9, 11 – 19, and 22 – 28 for failing to include a comma after the referencing claim number. Further, the examiner recommends an amendment for claim 29 to clarify the language. While the applicant does not fully agree with the examiner, the applicant amends the claims to address the formality objections to facilitate prosecution. The applicant also amends claim 8 to correct a typographical error. No new matter is added. In light of these amendments, the applicant requests that the examiner withdraw the objections cited against claims 2 – 9, 11 – 19, and 22 – 28.

The examiner also rejects claims 10 – 20, 26, and 29 under §112, 2<sup>nd</sup> paragraph for being indefinite. In particular, the examiner asserts that the term “substantially” is a relative term that renders the claim indefinite. The applicant disagrees. MPEP §2173.05(b)(D) states that the term “substantially” is definite. Therefore, the cited §112 rejection is not permitted under current patent law. Further, the applicant notes that the examiner has not provided any evidence to support his assertion that one skilled in the art would be unable to understand the meaning and scope of the use of the word substantially in claims 10 – 20, 26, and 29. As such, the applicant submits that the §112 rejection is legally insufficient. For at least these reasons, the applicant requests that the examiner reconsider and withdraw the §112 rejections.

The examiner also rejected claims 1 – 9 and 21 – 29 under §102(e) as anticipated by Derryberry (US2002/0128026). The applicant notes that no §102 (or §103) rejections were cited against claims 10 – 20. As such, the applicants believe that claims 10 – 20 are in condition for allowance in view of the above amendments and remarks. The following remarks address the §102 rejections cited against claims 1 – 9 and 21 – 29.

The published utility application to Derryberry was apparently filed 29 June 2001, and published 12 September 2002. As such, the preliminary §102(e) date for Derryberry is

apparently 29 June 2001. According to the §1.131 declaration submitted herewith, the inventor of the present application conceived the invention claimed in the present application no later than 11 February 2001, and the application was pursued with reasonable diligence through the filing of the application on or about 26 July 2001. Therefore, the inventors of the present application conceived their invention before the Derryberry utility application was filed, and pursued the idea with reasonable diligence until the constructive reduction to practice associated with the filing of a corresponding patent application on 26 July 2001. As a result, Derryberry's filing date of 29 June 2001 is insufficient under §102(e) and MPEP §715 to qualify Derryberry as prior art against the present application.

The applicant notes that Derryberry claims priority to a provisional application filed 15 January 2001. Therefore, Derryberry constitutes prior art under §102(e) only if the provisional application discloses the material relied upon by the examiner for the rejection. Should the examiner choose to maintain the rejection in view of Derryberry, the examiner must provide the applicant with a copy of the filed provisional application and must base the rejection on the teachings of the provisional application. Absent that, the §102(e) rejection cited against claims 1 – 9 and 21 – 29 must be withdrawn.

In addition, the applicant submits that Derryberry does not anticipate claims 1 – 9 and 21 – 29. Independent claims 1 and 21 claims *inter alia* transmitting “at least one dummy pilot signal.” Based on the plain teachings of the instant specification, a “dummy pilot signal” is an additional pilot signal formulated for an imaginary (virtual) receiver at a hypothesized location. See, for example, p. 3, ll. 7 – 7, p. 4, ll. 14 – 15, p. 22, ll. 9 – 10, etc. In other words, a “dummy pilot signal” is not used by any real receiver for channel estimation, but rather is used to determine inaccuracy in the forward link channel estimates maintained by the transmitting system for the real receivers. That is, to the extent that the channel estimates used by the transmitter to pre-process transmit signals for the real receivers are accurate, the dummy pilot

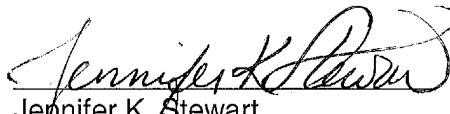
signal will not cause interference at the real receivers. Therefore, when properly construed, the claimed "dummy pilot signal" does not encompass any pilot signals intended to be received by existing receivers.

The examiner asserts that the pilot signals  $P_1$  and  $P_2$  described by Derryberry anticipate the claimed dummy pilot signals. However,  $P_1$  and  $P_2$  are identical pilot signals intended to be received by a receiver used by it for actual channel estimation. As described by ¶[0026] and ¶[0027],  $P_1$  and  $P_2$  are real pilot signals that travel through different channels to be received by a real receiver. The receiver uses the received characteristics to determine weights for each channel. Because nothing in Derryberry teaches or suggests transmitting a dummy pilot signal as claimed by independent claims 1 and 21, Derryberry does not anticipate independent claims 1 and 21 or any claims depending therefrom.

In light of the above arguments and amendments, the applicant submits that claims 1 – 29 stand in condition for allowance. Therefore, the applicant respectfully requests that the examiner reconsider the rejections and objections and issue a notice of allowance. Should any issues remain unresolved, the applicant requests that the examiner call the undersigned.

Respectfully submitted,

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